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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/821,704	03/28/2001	David Clive Moshal	23370-712	6099

21971 7590 03/24/2006

WILSON SONSINI GOODRICH & ROSATI  
650 PAGE MILL ROAD  
PALO ALTO, CA 94304-1050

EXAMINER

ALPERT, JAMES M

ART UNIT	PAPER NUMBER
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3624

DATE MAILED: 03/24/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/821,704	MOSHAL ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	James Alpert	3624	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 28 March 2001.
- 2a) ☐ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-22 are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date. _____  | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Election/Restrictions***

This application contains claims directed to six (6) patentably distinct species, discussed below.

Species 1 is a method for conducting a plurality of electronic exchanges over a network, conducted by a plurality of traders, and is characterized in part by designating a settlement criteria. Species 1 is demonstrated in Claims 1-7, and is described in Applicant's specification at (Page 3, lines 10-20).

Species 2 is a method for determining a transactional value of an item offered for exchange by a seller for a bidder, and is characterized in part by receiving a first signal to initiate an exchange. Species 2 is demonstrated in Claims 8-12, and is described in Applicant's specification at (Page 11, lines 9-23).

Species 3 is a method for conducting an electronic exchange over a network, and is characterized in part by receiving a plurality of offers, and identifying a plurality of acceptable offers from the plurality of offers. Species 3 is demonstrated in Claims 13-15, and is described in Applicant's specification at (Page 20, line 22 – Page 21, line 32).

Species 4 is a method for determining a transactional value of an item offered for exchange by a seller for a bidder, and is characterized in part by receiving a plurality of offers, including an existing ask offer from the seller and an existing bid offer from the bidder, and selecting periods of time to alter the offers. Species 4 is demonstrated in Claim 16, and is described in Applicant's specification at (Page 22, lines 1-21).

Species 5 is a method for determining a transactional value of an item offered for exchange by a seller for a bidder, and is characterized in part by receiving a plurality of offers from the traders, including bid offers. Species 5 is demonstrated in Claims 17-21, and is described in Applicant's specification at (Page 10, lines 8-16).

Species 6 is a method of conducting a plurality of electronic exchanges over a network, and is characterized in part by receiving a plurality of requests, each request being made to initiate one of the plurality of exchanges in which a plurality of offers are used to determine the transactional value. Species is demonstrated in Claim 22, and is described in Applicant's specification at (Page 8, line 10 – Page 9, line 4).

### ***Comments***

Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species or invention to be examined even though the requirement be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention. The distinct species from which to elect are summarized as follows:

Species 1: Claims 1-7  
Species 2: Claims 8-12  
Species 3: Claims 13-15  
Species 4: Claims 16  
Species 5: Claims 17-21  
Species 6: Claims 22

As indicated above, the election of an invention or species may be made with or without traverse. To reserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse.

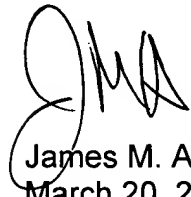
Should applicant traverse on the ground that the inventions or species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the inventions or species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C.103(a) of the other invention. The Examiner also observes that there is no generic claim. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

### ***Conclusion***

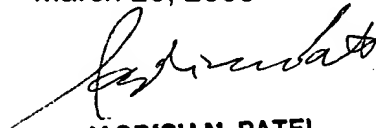
No telephone communication was placed regarding this election due to the complex nature of this application and restriction. See MPEP §812.01. Applicant is reminded that a shortened statutory period for response to this action is set to expire 30 (thirty) days from the mail date of this letter. Failure to respond within the period for response will result in abandonment of the application. See 35 U.S.C 133, MPEP §'s 710.02,710.02(b).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James Alpert whose telephone number is (571) 272-6738. The examiner can normally be reached on M-F 9:30-6:00. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vincent Millin can be reached on (571) 272-6747. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



James M. Alpert  
March 20, 2006



**JAGDISH N. PATEL**  
**PRIMARY EXAMINER**